

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

AREN A.

Claimant,

vs.

**HARBOR REGIONAL CENTER
Service Agency.**

OAH No. L 2006100332

DECISION

This matter came on regularly for hearing on December 1, 2006, in Torrance, California before Sandra L. Hitt, Administrative Law Judge, Office of Administrative Hearings, State of California.

Barbara Guzman, Program Manager, represented Harbor Regional Center (the Service Agency Center or HRC).

Aren A.¹ was represented by his mother, Michele Inaba.

Much of the documentary evidence presented by Claimant and the Service Agency was duplicative. To remedy this, the parties agreed that the documentary evidence should consist of the Service Agency's exhibits 1-10 and 14, and Claimant's Exhibits A and B. HRC's exhibits 11-13 were excerpts from the California Code of Regulations, which were marked for identification, but not admitted into evidence. The ALJ took official notice of Title 17 of the California Code of Regulations, Division 2, Chapter 3, subchapter 1.

Evidence was received, the matter was argued, the record was closed, and the case was submitted for decision.

¹ In this Decision, Claimant's surname is replaced with the initial "A" in order to protect his privacy.

ISSUES

This is an eligibility determination. The issue in this case is whether Aren A. (Claimant) has a developmental disability as defined by the Lanterman Act² and is thereby entitled to services from the Department of Developmental Services' Regional Centers.

SUMMARY OF FACTUAL FINDINGS

1. Claimant was born on April 13, 2003. He was approximately 43 months old at the time of hearing.

2. On January 20, 2006, Claimant was evaluated at the UCLA Semel Institute for Neuroscience and Human Behavior, and diagnosed with autism.

3. On June 20 and 26, 2006, and August 8 and 9, 2006, Claimant was evaluated by HRC clinical psychologist, Sylvia Young, who made a provisional diagnosis of autism, and recommended that Claimant be re-evaluated in a year. Claimant's parents are concerned that Claimant could be adversely impacted by delaying treatment at this developmental stage.

4. Claimant was assessed by the Palos Verdes Unified School District in July and September of 2006, in order to establish his eligibility for preschool special education services. During this assessment, the assessment team gave Claimant a rating of 34 on the Childhood Autism Rating Scale (CARS), placing him in the autistic range.

5. On September 29, 2006, a regional center multi-disciplinary committee met to determine Claimant's eligibility for regional center services. Claimant was denied eligibility for regional center services on the stated grounds that he did not present with a developmental disability of autism, cerebral palsy, epilepsy, mental retardation, or a condition requiring services similar to that required by persons with mental retardation (Exhibit 6). The multi-disciplinary committee relied on the fact that Dr. Young's diagnosis of autism was only a "provisional" or "working" diagnosis in arriving at their decision. HRC also argued at hearing that Claimant did not have a "substantial disability."

6. Claimant has significant impairment in the areas of self care, self-direction and communication (receptive and expressive language) HRC's expert, Dr. Young noted in her August 2006 report, (Exhibit 7) that:

[Claimant's] vocabulary is in the normal range.³ [His] ability to process longer questions was below average. He uses memorized phrases. The instructor

² Sections 4500 et seq. of the California Welfare and Institutions Code.

in his summer program expressed concerns about his language. [His] personal care is significantly delayed. . . . He does not consistently feed himself and does not help to dress himself. He has used the potty ‘only a couple of times’. [His] self-direction is significantly impaired. . . .

The UCLA evaluation (Exhibit 14) also noted that Claimant has significant impairment in the areas of self care, self-direction and communication.

7. Dr. Young testified at hearing that she gave Claimant a “provisional” diagnosis of autism with a notation to rule out Attention/Deficit-Hyper-Activity Disorder because Claimant is very young, and his test scores are inconsistent. However, Dr. Young acknowledged that very young children can be diagnosed with autism, and the UCLA evaluation report (Exhibit 14) noted that Individuals with Autistic Disorder do not typically present with a consistent scoring profile.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) is a comprehensive statutory scheme designed to provide supports and services for persons with developmental disabilities.⁴ The Act has a two-fold purpose: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community; and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4509, 4685, 4750 & 4751; see generally *Association for Retarded Persons v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.) The Department of Developmental Services (DDS) is the state agency required to implement the Lanterman Act. It carries out that responsibility by delivering its services through the various regional centers located statewide.

[T]he Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, “has jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons” (§4416), while “Regional Centers,” operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with “access to the facilities and services best suited to them throughout their lifetime” (§4620). (*Association of Retarded Persons, supra.* at p. 389.)

³ Dr. Young observed that Claimant had a good vocabulary; however, much of it consisted of memorized phrases, sometimes appropriate to the context but often out of context and repetitive. She noted significant impairments in claimant’s communication skills.

⁴ The Lanterman Act is codified at Welfare and Institutions Code section 4500 et seq. All references to the code herein are references to the Welfare and Institutions Code unless otherwise indicated.

2. Under the Diagnostic and Statistical Manual of Mental Disorders, Text Revision (DSM-IV-TR) a diagnosis of autism requires the exhibition of at least six of the twelve listed characteristics.

- (1) qualitative impairment in social interaction, as manifested by at least two of the following:
 - (a) marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expression, body postures, and gestures to regulate social interaction.
 - (b) failure to develop peer relationships appropriate to developmental level.
 - (c) a lack of spontaneous seeking to share enjoyment of, interests, or achievements with other people (e.g. by a lack of showing, bringing, or pointing out objects of interest)
 - (d) lack of social or emotional reciprocity
- (2) qualitative impairments in communication as manifested by at least one of the following:
 - (a) delay in, or total lack of, the development of spoken language (not accompanied by an attempt to converse through alternative modes of communication such as gesture or mime)
 - (b) in individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others
 - (c) stereotyped and repetitive use of language or idiosyncratic language
 - (d) lack of varied, spontaneous make-believe play or social imitative play appropriate to the developmental level.
- (3) restricted repetitive and stereotyped patterns of behavior, interest, and activities, as manifested by at least one of the following:
 - (a) encompassing preoccupation with one or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
 - (b) apparently inflexible adherence to specific, nonfunctional routines or rituals
 - (c) stereotyped and repetitive motor mannerisms (e.g. hand or finger flapping or twisting, or complex whole-body movements)
 - (d) persistent preoccupation with parts or objects.

(See Exhibits 7 and 14.)

3. In order for Claimant to be eligible for regional center services under the Lanterman Act he would have to present with a “developmental disability” and have a “substantial disability.”

4. Section 4512, subdivision (l) of the Welfare and Institutions Code provides in pertinent part:

“Substantial disability” means the existence of significant functional limitations in three or more of the following areas of major life activity, as determined by a regional center, and as appropriate to the age of the person:

- (1) Self Care
- (2) Receptive and expressive language
- (3) Learning
- (4) Mobility
- (5) Self-direction
- (6) Capacity for independent living
- (7) Economic self-sufficiency.

5. In an eligibility determination, the claimant bears the burden of proof, by a preponderance of the evidence, to establish that he or she has a qualifying developmental disability, and a substantial disability. Claimant has met that burden. Dr. Young’s report (Exhibit 7) and the UCLA evaluation at Exhibit 14 demonstrate that Claimant has significant impairment in the areas of communication (language), self care and self direction (Finding 6). Claimant has obtained an evaluation from the UCLA Semel Institute for Neuroscience and Human Behavior stating that Claimant has Autistic Disorder (Finding 2); also Claimant obtained an assessment from the Palos Verdes Unified School District in which the assessment team gave Claimant a rating of 34 on the CARS, placing him in the autistic range (Finding 4). Finally, Claimant received a provisional diagnosis of autism from HRC (Finding 3). Dr. Young testified that it is likely that Claimant will ultimately be diagnosed with a developmental disability, although it may not necessarily be autism, but perhaps something along the autism spectrum. This uncertainty is not sufficient to sway the balance, given the strong evidence in favor of a diagnosis of autism. Whether the diagnosis will change or be confirmed in the future is something that cannot now be known. If a different diagnosis is made in the future, the issue of eligibility may be revisited at that time.

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WHEREFORE, THE FOLLOWING ORDER is hereby made:

ORDER

Claimant has established his eligibility for services. Claimant's appeal of the service agency's determination that he is not eligible for regional center services is sustained. The Service Agency shall accept Claimant as a consumer forthwith.

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

DATED: December 5, 2006

SANDRA L. HITT
Administrative Law Judge
Office of Administrative Hearings